

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE:

HERBERT E. WITHERS, III, AKA
HERBERT E. WITHERS, AKA HERBIE E.
WITHERS

Case No. 14-33679-KLP
(Chapter 13)

FEDERAL NATIONAL MORTGAGE
ASSOCIATION (FANNIE MAE),
CREDITOR C/O SETERUS, INC
Plaintiff

v.

HERBERT E. WITHERS, III, AKA
HERBERT E. WITHERS, AKA HERBIE
E. WITHERS
7500 HAWTHORNE AVENUE
HENRICO, VA 23227
(Debtor(s))

SUZANNE E. WADE
P.O. BOX 1780
RICHMOND, VA 23218-1780
(Trustee)
Respondents

MOTION FOR RELIEF FROM AUTOMATIC STAY

Federal National Mortgage Association (Fannie Mae), creditor c/o Seterus, Inc
("Fannie Mae") by undersigned counsel, respectfully moves this Honorable Court to
terminate the Automatic Stay and, as grounds therefore, states as follows:

1. This proceeding seeking relief under Section 362 of the U.S. Bankruptcy
Code is a contested matter within the meaning of 9014 and 4001 of the Federal Rules of
Bankruptcy Procedure, and this court has jurisdiction over this matter pursuant to 28

U.S.C. Section 157.

Sameera Navidi, Bar #89441
Kathryn E. Smits, Bar #77337
Namrata Loomba, Bar #87222
Orlans PC
PO Box 2548
Leesburg, Virginia 20177
(703) 777-7101

2. On July 9, 2014, the above named debtor, Herbert E. Withers, III, aka Herbert E. Withers, aka Herbie E. Withers (“Debtor”), filed in this court a Petition under Chapter 13 of the United States Bankruptcy Code. Suzanne E. Wade was appointed Chapter 13 Trustee.

3. On or about January 21, 2011, the Debtor executed and delivered to BANK OF AMERICA, N.A. a Note in the amount of ONE HUNDRED SIXTY-SIX THOUSAND FIVE HUNDRED and 00/100 dollars (\$166,500.00), plus interest at the rate of 4.50% per annum to be paid over thirty (30) years. A copy of the Note is attached as Exhibit “A” and incorporated herein.

4. To secure the repayment of the sums due under the Note, the Debtor executed and delivered to BANK OF AMERICA, N.A. a Deed of Trust dated January 21, 2011 encumbering the real property (“Property”) described as:

LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS ALL THAT CERTAIN PROPERTY SITUATED IN THE COUNTY OF HENRICO, AND STATE OF VIRGINIA AND BEING DESCRIBED IN A DEED DATED 07/08/2002 AND RECORDED 07/17/2002 IN BOOK 3278 PAGE 2520 AMONG THE LAND RECORDS OF THE COUNTY AND STATE SET FORTH ABOVE, AND REFERENCED AS FOLLOWS:

ALL THOSE CERTAIN LOTS, PIECES OR PARCELS OF LAND, LYING AND BEING IN HENRICO COUNTY, VIRGINIA, AND BEING DESIGNATED AS LOTS 3, 4 AND 5, IN BLOCK K, PLAN OF STUART ADDITION, WHICH PLAT IS OF RECORD IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF HENRICO COUNTY, VIRGINIA, IN PLAT BOOK 15, PAGES 80 AND 81, SAID LOTS FRONTING 150 FEET ON HAWTHORNE AVENUE.

PARCEL NO. 785-753-6103

which has the address of 7500 Hawthorne Avenue, Richmond, VA 23227. A copy of the Deed of Trust is attached as Exhibit “B” and incorporated herein.

5. The Deed of Trust and Note were later transferred to Fannie Mae and Fannie Mae is the holder of the Deed of Trust and Note. A copy of the Assignment is attached as Exhibit “C” and incorporated herein.

6. The Debtor agreed to a permanent modification of the loan described above. The Loan Modification Agreement is attached as Exhibit “D” and incorporated herein.

7. As of April 10, 2018, the Debtor(s) owe an unpaid principal balance of \$159,009.15 under the Note, plus additional accruing interest, late charges, attorneys’ fees and costs.

8. As of April 10, 2018, the Debtor(s) is post-petition due for September 1, 2017, which includes the following missed payments:

Periodic Payments in Arrears	Number of Missed Payments	From	To	Payment Amount	Total Due
Post - Petition Payments	5	09/01/2017	01/01/2018	\$ 997.89	\$4,989.45
Post - Petition Payments	3	02/01/2018	04/01/2018	\$ 928.27	\$2,784.81
Suspense:					\$ 236.92
Total Payments Past Due					\$ 7,537.34

9. The scheduled market value of the Property is \$160,000.00.
10. The Debtor is in default under the Note.
11. The Debtor has not and cannot offer Fannie Mae adequate protection of its interest in the Property, and Fannie Mae avers it is not adequately protected.
12. The Property is not necessary for an effective reorganization, since the Debtor has little or no equity in the Property.
13. Cause exists to terminate the Automatic Stay.
- 14. THE DEADLINE TO FILE A RESPONSE TO THIS MOTION FOR RELIEF FROM THE AUTOMATIC STAY IS FOURTEEN (14) DAYS AFTER**

**SERVICE OF THIS MOTION, WHICH IS THE DATE SHOWN ON THE
CERTIFICATE OF SERVICE.**

WHEREFORE, Movant prays that this Court issue an Order terminating or modifying the stay and granting the following:

- a. Relief from the stay allowing Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property and/or allowing Movant, through its agents, servicers and representatives to contact Debtors and/or Debtors' counsel for the purpose of engaging in discussions and consideration for possible loss mitigation options, solutions and/or resolutions with regard to the underlying mortgage and note, including, but not limited to loan modification, deed in lieu or other loss mitigation alternatives.
- b. That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.
- c. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived.
- d. That it be exempted from further compliance with Fed. Rule Banker. P. 3002.1 in the instant bankruptcy case.
- e. For such other relief as the Court deems proper.

Respectfully submitted,

/s/ Sameera Navidi
Sameera Navidi, Bar #89441
Kathryn E. Smits, Bar #77337
Namrata Loomba, Bar #87222
Attorneys for the Plaintiff
Orlans PC
PO Box 2548

Leesburg, Virginia 20177
(703) 777-7101

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Motion for Relief from Automatic Stay were mailed by first class mail, postage-paid, and served electronically, where applicable, this 16th day of May, 2018 to the following parties:

Herbert E. Withers, III
7500 Hawthorne Avenue
Henrico, VA 23227
Debtor
Via first class mail

Pia J. North
North & Associates, P.C.
5913 Harbour Park Drive
Midlothian, VA 23112
Attorney for the Debtor
Via first class mail and electronic

Suzanne E. Wade, Trustee
P.O. Box 1780
Richmond, VA 23218-1780
Via first class mail and electronic

/s/ Sameera Navidi
Sameera Navidi, Esquire
Kathryn E. Smits, Esquire
Namrata Loomba, Esquire